

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FINANCE**

**Call to Order:** By **CHAIRMAN BOB KEENAN**, on March 13, 2001 at 8:00 A.M., in Room 317 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Bob Keenan, Chairman (R)  
Sen. Ken Miller, Vice Chairman (R)  
Sen. Tom A. Beck (R)  
Sen. Chris Christiaens (D)  
Sen. John Cobb (R)  
Sen. William Crismore (R)  
Sen. Greg Jergeson (D)  
Sen. Royal Johnson (R)  
Sen. Bea McCarthy (D)  
Sen. Arnie Mohl (R)  
Sen. Linda Nelson (D)  
Sen. Debbie Shea (D)  
Sen. Corey Stapleton (R)  
Sen. Bill Tash (R)  
Sen. Jon Tester (D)  
Sen. Mignon Waterman (D)  
Sen. Jack Wells (R)  
Sen. Tom Zook (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Prudence Gildroy, Committee Secretary  
Jon Moe, Legislative Fiscal Division

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 47; HB 342; HB 525; HB 533  
Executive Action: HB 47; HB 342

**INFORMATIONAL HEARING ON HB 47**

**Sponsor:** REP. WILLIAM PRICE, HD 94, Lewistown

**Informational Witnesses:** Carroll South, Executive Director,  
Board of Investments

**Proponents:**

**Opponents:**

**Opening Statement by Sponsor:**

REP. WILLIAM PRICE, HD 94, Lewistown, addressed the basic points of the fiscal note. The bill removes the requirement that state bank examiners examine loans and investments, increases the maximum loan for in-state investments, requires commercial lender participation for certain investments, and eliminates restrictions on maximum loan sizes for purposes of job credit interest rate reductions. He explained the fiscal note. Loans referenced in HB 47 are made from the permanent coal tax trust. Income from the coal tax trust will continue to be deposited in the general fund. As loans go out there is return on the principal. Increasing the maximum loan size restrictions will have no impact on the trust or the state general fund. If a large loan is issued, it will be a substantial project that will create jobs and the potential for income taxes and property taxes.

**Questions from Committee Members and Responses:**

CHAIRMAN BOB KEENAN asked about best and worst case scenario with the fiscal note and the impact on the general fund from a large loan. Carroll South, Executive Director, Board of Investments, said there was no fiscal impact. They are encouraged to loan up to 25 percent of the permanent coal tax trust in the in-state loan program. State law permits them to reduce interest rates, up to 2 ½ percent, for the creation of jobs. Most of the loans made under the program had no job creation. He estimated the loss from reduced interest rates would be \$300,000 to \$700,000. That would be worst case. There are only a handful of loans that have interest rate reduction.

SEN. GREG JERGESON asked how the bill related to SEN. MCNUTT's bill that was passed during the special session. He wondered about loans in that program and what the revenue losses were on that level of loan volume. Mr. South claimed that SEN. MCNUTT's bill was a different program and had nothing to do with the program that was being amended in the bill. It is the "value

added" loan program with a \$50 million cap. There has been one loan made for about \$350,000 at about 2 percent interest. Under current policy, the 2 percent interest rate does not come into effect until it is certified that 15 jobs have been created.

**SEN. JERGESON** asked if the bill changed the 1 percent limitation per loan. **Mr. South** said it did not.

#### EXECUTIVE ACTION ON HB 47

**Motion/Vote:** **SEN. JOHNSON** moved that **HB 47 BE CONCURRED IN.**

**Motion carried 18-0.**

#### INFORMATIONAL HEARING ON HB 342

**CHAIRMAN KEENAN** said the bill was from a recommendation by the legislative audit division and explained that a policy decision was needed as to whether enforcement agencies should be allowed to keep fees and fines or not.

**Sponsor:** **REP. GLINDA CLANCY, HD 51, Helena**

**Informational Witnesses:** **Mr. Wayne Budt, MPSC**

#### Opening Statement by Sponsor:

**REP. GLINDA CLANCY, HD 51, Helena,** said the bill was introduced at the request of the Montana Public Service Commission (PSC). They collect fees for photocopies and motor carrier fees of approximately \$9,000 per year and put the money into a special revenue account. There needs to be a determination of where those fees should be placed.

#### Questions from Committee Members and Responses:

**SEN. ROYAL JOHNSON** asked what is done with the fees and how they were raised. **Mr. Wayne Budt, MPSC,** stated that the fees are put into the general fund. They can be raised by commission rules.

**SEN. JOHNSON** asked about the rate charged to get \$9,000. **Mr.**

**Budt** said that the \$9,000 includes application fees for motor carriers, photocopy fees, and vehicle identifier fees. **SEN.**

**JOHNSON** asked if the PSC is funded by the utilities in the State of Montana. **Mr. Budt** said the PSC tax funds the PSC. **SEN.**

**JOHNSON** asked why they needed those fees to go into the special revenue account if utilities can be assessed more if needed.

**Mr. Budt** said the bill was at the suggestion of the legislative auditor.

**SEN. STAPLETON** asked if the PSC ever administered any fines. **Mr. Budt** said they had that ability but rarely did it. Fines that the commission administers have to be enforced by the district court. **SEN. STAPLETON** asked about the phrase on line 13, "any other fees directed by the department". **Mr. Budt** said that in addition to the fees collected by the Department of Revenue, that any other fees that the PSC collects would also go the special revenue account. He stated it did not matter to the PSC, they were complying with what the auditors wanted.

**SEN. ZOOK** advised that it has been a policy of the legislature that fines and forfeitures go into the general fund so there is no incentive to increase or go out and get new fines. He thought it important to stay with that policy. He felt they could retain photocopy charges. He thought the legislative auditor should not determine what policies the legislature adopts.

**SEN. JERGESON** said what was being considered was not fines and forfeitures. **Mr. Budt** said there weren't any fines or forfeitures in the last fiscal year, so the bill dealt with fees. Fines and forfeitures would fit under it. Any money they collect, if it goes to the state special revenue account, is taken into account when the next budget and PSC tax are set. The money in the special revenue account offset their budget.

**SEN. CHRISTIAENS** asked for clarification. **Mr. Budt** said the fines and fees currently go into the general fund. The bill would move those to state special revenue. **SEN. CHRISTIAENS** asked if an amendment was needed. **Mr. Budt** thought fines would be included. **SEN. COBB** did not agree fines would be included. **Jon Moe, Fiscal Division** agreed with **SEN. COBB** and said that would need clarification. **SEN. NELSON** thought the issue was redundant. **SEN. JERGESON** said all fees collected under the section would be included, not fees in other sections. **SEN. MOHL** asked if all fees go into the general fund without exception. **Mr. Moe** said the vast majority go into state special revenue. FWP are an example.

**SEN. MILLER** asked for clarification on the audit report. He asked if there was a recommendation to clarify what fees are or if the code says fees go into special revenue. **Mr. Budt** replied that the PSC is funded through a special revenue account. Fees are deposited in the general fund. The auditor said the legislature should decide where the fees needed to be placed. **SEN. MILLER** asked about the timing of the audit. **Mr. Budt** replied the audit was in the fall of 1998.

**SEN. WATERMAN** asked where fines and forfeitures would go if the bill was tabled. **Mr. Budt** advised the general fund. **SEN. NELSON** asked if the PSC would care. **SEN. JOHNSON** did not read the bill that way. **Mr. Budt** said without the new language his assessment is right. **SEN. NELSON** thought the language should be changed for clarification. **SEN. JOHNSON** said the fees are being handled the way they should be and the law should not be changed. He agreed with **SEN. ZOOK's** comments. {Tape : 1; Side : B} **SEN. TESTER** thought the bill should be killed. It bothered him that the auditor wanted the bill to clear something up when it did not need to be cleared up. **SEN. MILLER** sent for the audit. He thought they were trying to clarify what fees were. **SEN. WATERMAN** asked if the legislative auditor routinely asked for bills without going through the audit committee. **SEN. MILLER** said they make recommendations. **Mr. Budt** reiterated that the recommendation for the bill came from the legislative auditor for the purpose of the legislature determining where the fees should go.

**Motion/Vote:** **SEN. JOHNSON** moved that **HB 342 BE TABLED**. Motion carried 16-2 with Cobb and Jergeson voting no.

#### HEARING ON HB 525

**Sponsor:** **REP. DAVE KASTEN, HD 99, Brockway**

**Proponents:** **None.**

**Opponents:** **Eric Feaver, MEA, MFT**  
**Lance Melton, Montana School Boards Association**

**Informational Witnesses:** **Terry Johnson, Legislative Fiscal Division**

#### Opening Statement by Sponsor:

**REP. DAVE KASTEN, HD 99, Brockway**, testified that HB 525 amends the present expenditure limitation. It would not limit what the governor proposes, but will make more legislators aware of the budget process. Wants and needs will be laid out more clearly. Increases will be more in tune with economic growth and population. The budget needs plus the growth factor and the ending fund balance will be in the budget. A two thirds vote will be needed for spending authority beyond that. Any funds in excess of the formula will go into a reserve or rainy day fund. The fiscal analyst will report if the budget conforms to the limitation or not. If not, the two thirds vote would be needed or the budget would need to be reduced. He explained that the

growth factor is the inflation rate and the population change. The limitation only includes general fund appropriations. The bill lists exclusions and sets up a reserve account. He said proponents were all the taxpayers of Montana.

**Proponents' Testimony:**

None.

**Opponents' Testimony:**

**Eric Feaver, MEA, MFT**, said he represented 50,000 Montana taxpayers. He advised that HB 525 begs minority rule. In the future anything beyond the growth factor would be subject to the two-thirds vote. He predicted one legislative crisis after another beginning with the governor's budget. He did not believe the constitution restricts the governor in proposing her budget. He said separation of powers prevented the legislature restricting the governor from submitting a budget to the legislature. Her budget would have to be in two parts, one subject to the growth factor and another that is an increase of the growth factor. In effect, that is telling the governor the only budget that she can provide is the budget that the legislature says she can provide. If the state needs more, then that goes into a set-aside that is subject to a 2/3 vote of the legislature. He characterized the bill as meaningless. He thought HB 525 results in an inevitable game. Agencies will want to move from the general fund and become exempt. The growth factor could be zero or less. The needs of the citizenry don't just disappear. If more money flows in to the state than is budgeted, it falls into a restricted reserve account that can only be used for unbudgeted items, overruns, supplementals or tax relief. SB 525 exempts tax relief from the budget process as though somehow the general fund has never paid for a tax expenditure. The general fund always pays for tax expenditures. A tax increase may never be possible without a 2/3 vote. It will take a 2/3 vote to fund public schools. A tax referendum will have to go to the people. He compared the bill to CI-75. He said the constitution contemplated the legislature being the business makers of the state. He didn't know how public schools would be paid for in the future with SB 525, except by a super majority. He stated that minority rule is a bad idea and urged that the bill be tabled.

**Lance Melton, Montana School Boards Association**, opposed the bill. He presented and explained a handout extracted from the 2001 governor's budget overview. The overview showed some historical trends and what agencies benefitted from the growth factor. He stated that there are areas of the state general fund

that require growth in excess of inflation to meet specific needs and K-12 public education is one of them. The percentage of the general fund going to fund K-12 has dropped dramatically. Corrections and General Government increased. He presented a copy of the bill with suggested amendments. **EXHIBIT(fcs57a01)** He suggested exempting all state expenditures on K-12 public education and state expenditures on other programs funded at less than cumulative inflation during the time period encompassing FY 1991 through FY 2003 from the state expenditure limitation. He also proposed to address historical shortfalls in state funding of K-12 public education from FY 1991 through FY 2003 in comparison to inflation. He thought the legislature should make a conscious decision where it commits its funds each session and that should be done by the legislature as a whole not one-third.

**Terry Johnson, Principal Fiscal Analyst, Legislative Fiscal Division**, handed out a document summarizing the provisions of SB 525. **EXHIBIT(fcs57a02)**

**Questions from Committee Members and Responses:**

**SEN. ZOOK** addressed the comments of **Mr. Melton** regarding the percentage dropping dramatically. **Mr. Melton** restated it was the percentage of state general fund going to K-12 public education. **SEN. ZOOK** thought the use of a percentage was misleading. **Mr. Melton** affirmed there had been an increase in funding for public education over the last decade. He said percentages had to be used for the purposes of the discussion and it is accurate to both look at the increase in funding and what that represents as a percentage increase. **SEN. ZOOK** asked if the use of percentages was misleading to the public as far as the effort that the legislature has made in funding public schools. **Mr. Melton** contended it was not misleading.

**SEN. JOHNSON** wondered if the percentage of increase in the chart for Corrections reflected a corresponding increase in prisoners. **Mr. Melton** acknowledged the increase in prison population and the challenges for funding Corrections, Human Services and Higher Education. He was not suggesting a wrongful allocation of funds to the other areas. He said the information is in the 2001 executive budget and the 2203 executive budget. **SEN. JOHNSON** asked the same question of the staff. **Mr. Johnson** said they would obtain the information for him. **SEN. JOHNSON** thought a comparison would be interesting. He asked if it would be a substantially greater number to take 1 percent of the Corrections budget that uses general fund compared to 1 percent of the K-12 budget that uses general fund. **Mr. Johnson** said that would be

true. He said 1 percent of K-12 would be approximately \$500 million per year. Corrections would be roughly \$110 million.

**SEN. CHRISTIAENS** said the difficulty with comparing education funding with Corrections is that Corrections is a twenty-four hour a day, seven day a week operation. One of the major issues with Corrections is the total population under supervision in the community which is about 6700.

**{Tape : 2; Side : A}**

**SEN. WATERMAN** asked what shortfall meant under the reserve account in the bill. **Mr. Johnson** said that section of the bill was based on the ending fund balance. Money in the reserve account could be used by the next legislature to provide tax relief or to cover various types of shortfalls and for supplementals. **SEN. WATERMAN** asked if the money could be used to fund an additional cost in excess of cap or just used as a supplemental. **Mr. Johnson** said his interpretation was that it could only be used for a specific shortfall and not any additional increases. He said the reserve account is not within the general fund. It is a state special revenue account and will not enter into the formula process.

**SEN. ZOOK** asked how the population increase was determined from year to year. **REP. KASTEN** said it was done by the University of Montana.

**SEN. COBB** asked if the bill had passed last session, how would it have affected this years session. **REP. KASTEN** said the effect would have been that the governor would have presented a budget \$26 million smaller than it was. Anything over that would have been segregated.

**SEN. JERGESON** asked what constitutes the adoption of the general appropriations cap. **REP. KASTEN** said the status sheet would inform the legislature as the budget process was finished up.

**SEN. JERGESON** asked where the 2/3 vote would be required. **REP. KASTEN** said everything is there from the previous budget.

Anything over that would have to be looked at with a 2/3 vote.

**SEN. JERGESON** asked how to identify what expenditures would cause the budget to be over the limitation requiring a 2/3 vote. He asked if the 2/3 vote would be needed for new proposals, the entire budget bill or a portion of it and how the portion would be identified. **Mr. Johnson** said the legislative staff would advise the legislature on the weekly status sheet in terms of the expenditure limitation. That would take into account all "cat and dog" bills and HB 2. In terms of the procedure, the final conference committee report on HB 2 plus any outstanding "cat and dog" bills would be used before adjournment. There is a provision in the bill that the Legislative Fiscal Analyst shall



certify to the legislature whether the limitation is being met or not. **SEN. JERGESON** asked what identifies the increase that would have to be voted on. All the "cats and dogs" would be statutory appropriations. SB 184 creates a statutory appropriation from the general fund for local government reimbursement. He asked if that bill requires a 2/3 vote and what constitutes an increase in the general appropriations act. **Mr. Johnson** interpreted the legislation to mean the budget in total. It would not be a specific piece of legislation like SB 184, it would be the entire budget including statutory appropriations, HB 2, and "cat and dog" bills. If the entire budget exceeds the limitation, the options are the 2/3 vote or adjusting budget until in conformance.

**Closing by Sponsor:**

**REP. KASTEN** closed on HB 525. He pointed out that the 2/3 vote is in existing law. He said he had not come to debate education but passed out a copy of a news article. **EXHIBIT (fcs57a03)** During the budget process, if an emergency comes up or if the population is going down, the legislature will have to be aware of it. If a proposal is important enough, two-thirds will vote for it. He again said it would be a tool. He said he had not previously encountered opponents to the bill and that was why he passed out the handout. He thought the bill would get more legislators involved in the budget process to better understand the financial situation and maintain a stable budget to fund the priorities for Montanans. He asked for a unanimous vote.  
(recess)

**HEARING ON HB 533**

**Sponsor:** **REP. STEVE VICK, HD 31, Belgrade**

**Proponents:** **None.**

**Opponents:** **None.**

**Opening Statement by Sponsor:**

**REP. STEVE VICK, HD 31, Belgrade,** stated the HB 533 is simple. The bill allows the legislature to restrict personal services funds to allow use only for the purpose of appropriation. The bill allows but does not require. The other amendment that was put on the bill in committee is on page 5 regarding program transfers and that approval of transfers must be in writing. This goes back to the issue of the modified FTE that were added by the DOC. He researched that matter and found that there was no paperwork signed that allowed hiring 60 FTEs. It was felt

there should be a paper trail. There are other amendments to the bill that allow the change.

**Proponents' Testimony:**

None.

**Opponents' Testimony:**

None.

**Questions from Committee Members and Responses:**

**SEN. ROYAL JOHNSON**, asked about vacancy savings. **REP. VICK** said vacancy savings could be used if it was outside personal services expenditures. It could not be used for computers, but could be used for contract services. The bill does not mandate anything, it is the language in HB 2 that allows the use of the money for contracted services. **SEN. JOHNSON** reiterated it couldn't be used to balance an agency budget for any other reason. **REP. VICK** agreed. **SEN. JOHNSON** inquired if departments use vacancy savings to balance their budget currently. **REP. VICK** thought that had been practiced and that was one of the things the bill was trying to stop.

**SEN. JERGESON** asked about the definition of a condition contained in a general appropriations act. **Clayton Schenk, Legislative Fiscal Division**, said the intent placed in the narrative is talking about the Legislative Fiscal Division narrative that accompanies the bill. A condition would be placed in HB 2 with the actual language in the bill either in "boiler plate" or in language from an agency. In this case it would be a condition place upon it in "boiler plate" restricting personal services except for contracted services. **SEN. JERGESON** asked about the purpose of the appropriation. He wondered if FTEs would be able to be moved from one division to another. **REP. VICK** said the bill doesn't do anything on its own other than allow writing language in HB 2. He speculated that situation could be taken care of in HB 2. The bill is a tool to give flexibility. **SEN. JERGESON** asked who would sign the form. **REP. VICK** replied the approving authority which can vary depending on the type of transfer being made. The governor and the budget director are both considered approving authorities. **SEN. JERGESON** asked if the approving authority would need to specifically delegate that some other person be authorized to sign. **Mr. Schenk** clarified the issue of limiting distribution between programs within an agency. He said there is substantive law that allows agencies to do program transfers between divisions. He believed that it

couldn't be done with HB 533. It wouldn't allow a restriction between divisions without an amendment that somehow allows it under the program transfer law.

**SEN. MIGNON WATERMAN** said in last session in the Human Services budget there was the largest supplemental ever. There was a concern that the department did not react earlier. It might have been appropriate for that department to consider a hiring freeze six months before. She wondered if the language had been restricted then, if they would not have been able to institute a hiring freeze and use that money to cover the supplemental.

*{Tape : 2; Side : B}*

**REP. VICK** said it was his opinion that if they had instituted a hiring freeze, they wouldn't be spending the money and wouldn't need them money to pay for the supplemental. He thought that was different than using the money to buy office equipment. **SEN. WATERMAN** thought it was in the wrong part of the budget. With the trigger in the bill, if there was a hiring freeze, there would be a surplus in the personnel budget that they could not use to cover cost over-runs. **SEN. TOM ZOOK** thought that was covered on page 5 by the approving authority. **SEN. WATERMAN** asked if they could override the language in HB 2 if the budget director approved it in writing. **SEN. ZOOK** said that was how he read it. **SEN. WATERMAN** said she was not convinced that the governors office had the right to override other things in HB 2. She was concerned they could override other things the legislature put into budget. She requested clarification. **SEN. COBB** thought personal services were restricted in the last budget. **REP. VICK** agreed, but **Greg Petesch** had said the legal authority wasn't there.

**SEN. CHRIS CHRISTIAENS** asked for clarification on personal services transferred to a different program. **Mr. Schenk** said program transfers could not be precluded with the way the bill was currently written. If a program transfer was done, they couldn't use it for a purpose other than personal services. That would get them around the law.

**SEN. WATERMAN** asked if the bill was triggered by the hiring of the prison guards by DOC and what in the bill would stop a transfer into personal services. **REP. VICK** said the bill was not triggered by the hiring. That triggered the signature part of the bill. What triggered the bill was language in HB 2 that restricted personal services. The fiscal division determined that was not allowed under current law. A law was need that allowed that. **SEN. WATERMAN** asked if the language would allow the legislature to restrict transfer into personal service and said it did not as she read the bill.

**SEN. BECK** remarked that when DOC asked for new FTEs, the money was taken from the governor's emergency fund for personal services. **Mr. Schenk** said that part came from an emergency fund of \$1 million that was set aside in the budget for emergency purposes. The total cost of the FTE was \$5.99 million. Part of the funding came from re-prioritizing the DOR budget. **SEN. BECK** asked if they took the money from operating costs for personal services. **Mr. Schenk** said that was correct. **SEN. BECK** asked if the bill did not preclude doing that. **Mr. Schenk** said the bill was intended to keep agencies from moving money down. They will get funded the next year under present law for the number of FTEs they were authorized for the prior year. An agency can move the money down and build the base in operating costs. They can still restore what they have in personal services. When the opposite occurs, and money is moved out of operating costs, the base is reduced. **SEN. BECK** asked if FTEs were part of the base. **Mr. Schenk** said it was part of the base but funded differently.

**SEN. MCCARTHY** said the key word would be "authorized". **Mr. Schenk** agreed and said the DOC additional FTE were not funded in the base.

**SEN. JERGESON** inquired about taking money from personal services to cover a supplemental. **Mr. Schenk** said that if the bill was in place and the language in HB 2 restricted personal services, then if a supplemental was needed, personal services could not be moved down to fund it. **SEN. JERGESON** asked about the DNRC fire supplemental. **Mr. Schenk** said there could be a problem as fires are not budgeted for. DNRC uses all of its budget to fund a supplemental and are counts on a replacement. He said he would need to talk to **Greg Petesch** about legal issues.

**SEN. BECK** asked if DOC hiring the FTEs lowered their base budget \$4 million but didn't show a credit on the personal services side. **Mr. Schenk** said that was correct. They moved it into operating costs. It probably didn't reduce the base, because DOC is dealing with prison population growth in arguing to restore the base. They had to get it by a present law adjustment as opposed to just being in the base. **SEN. BECK** said that showed a \$4 million dollar increase to present law. **Mr. Schenk** said that made it look like a \$4 million increase. **SEN. BECK** asked about the personal services budget showed 59 FTE below what was actually used during the biennium. **Mr. Schenk** confirmed that.

**SEN. COREY STAPLETON** asked how to keep from playing favorites between the agencies and be consistent in the application. **REP. VICK** said that language in HB 2 would deal with the specifics. Language on exempting supplementals could also be added to HB 2.

The bill allows writing restrictions into HB 2. **Mr. Schenk** said he would have to confer with legal counsel on that issue.

**SEN. CHRISTIAENS** asked how the supplemental for DOC for contract beds would be dealt with in current HB 2. **REP. VICK** reiterated that the bill was written as a tool. It doesn't restrict anything, just gives the ability to do it. The specifics would still be dealt with in HB 2. His hope was that the bill would help give a true picture of personal services.

**SEN. ZOOK** asked if the language would not restrict every agency, even if it was in HB 2 and if exceptions could be made. **REP. VICK** said exceptions should be made.

**Closing by Sponsor:**

**REP. VICK** closed on HB 533. He said the bill was a tool for the budgeting process.

**ADJOURNMENT**

Adjournment: 10:20 A.M.

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SEN. BOB KEENAN, Chairman

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PRUDENCE GILDROY, Secretary

BK/PG

**EXHIBIT (fcs57aad)**